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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,711	09/04/2003	Billy R. Masten		7176

7590
Dorsey L. Baker
4603 Eleventh Street
Lubbock, TX 79416

03/08/2007

EXAMINER

MERLINO, AMANDA H

ART UNIT	PAPER NUMBER
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2877

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. <u>10/655,711</u>	Applicant(s) MASTEN, BILLY R.	
	Examiner Amanda H. Merlino	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to..
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 17-23 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With regards to claim 17-20, he claims are directed to a judicial exception (an abstract idea); as such, pursuant to the Interim Guidelines on Patent Eligible Subject Matter (MPEP 2106)), the claims must have either physical transformation and/or a useful, concrete and tangible result. The claims fail to include transformation from one physical state to another. Although, the claims appear useful and concrete, there does not appear to be a tangible result claimed. Merely comparing said digital data would not appear to be sufficient to constitute a tangible result, since the outcome of the comparing said digital data step has not been used in a disclosed practical application nor made available in such a manner that its usefulness in a disclosed practical application can be realized. As such, the subject matter of the claims is not patent eligible.

With regards to claim 21-23, he claims are directed to a judicial exception (an abstract idea); as such, pursuant to the Interim Guidelines on Patent Eligible Subject Matter (MPEP 2106)), the claims must have either physical transformation and/or a useful, concrete and tangible result. The claims fail to include transformation from one physical state to another. Although, the claims appear useful and concrete, there does

not appear to be a tangible result claimed. Merely comparing said spatial distribution of light to determine the similarity of the standard of comparison with the additional line would not appear to be sufficient to constitute a tangible result, since the outcome of the comparing said spatial distribution of light to determine the similarity of the standard of comparison with the additional line has not been used in a disclosed practical application nor made available in such a manner that its usefulness in a disclosed practical application can be realized. As such, the subject matter of the claims is not patent eligible.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 3-29 rejected under 35 U.S.C. 102(b) as being clearly anticipated by (6,377,699)

With regard to claims 1-2 and 3-29, Musgrave et al teach of an apparatus in accordance with figures 2a and 8 comprising,

a) a lens (110) for directing reflected light from an object (150) upon a sensor array (150) to obtain electronic data in spatial segments representative of said object (150);

b) a controller/comparator (microprocessor 150) for obtaining the electronic data representative of said reflected light from a selected object and for obtaining data

representative of additional reflections of light in spatial segments from an additional objects;

c) said controller/comparator including a digital logic chip (microprocessor/digital signal processor 150) for comparing the data obtained from said selected object stored in memory (532) with the data representative of additional reflections in accord with an algorithm and for generating a signal(555, 556, 557) indicative of the results of said comparison.

With regard to claims 2 and 11, Musgrave teaches of an A-D converter (405) for converting the data to digital form and for facilitating said comparison.

With regard to claim 4, Musgrave teaches a microcontroller having a first memory (530) for receiving reflected light from said selected object and a second memory (532) for receiving data representative of the additional reflections.

With regards to claims 25-26, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regard to claim 28, Musgrave teaches of a switch for generating electronic data (col 7: line 47).

Claim 30 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Micka (3,944,369).

Micka teaches of a vision scanning method for the inspection, identification of an object, said scanning method in accordance with figure 1 comprising:

- a) obtaining digital data reflecting a first spatial distribution of light from said object (10)
- b) repeatedly obtaining digital data reflecting additional spatial distributions of light from other objects (50);
- c) electronically comparing (3)) said first spatial distribution of light with said additional spatial distributions of light to determine the similarity and/or difference between them; and
- d) emitting a signal (34) reflecting the similarity and/or difference.

With reference to spatial distribution, Micka teaches of illuminating a spot that has a diameter and thus the reflected light has spatial distribution.

Response to Arguments

Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fachinger et al (5,528,363) teaches of an integrated device for instantaneous detection comprising a sensor array detecting reflected spatial distribution and central processing unit.

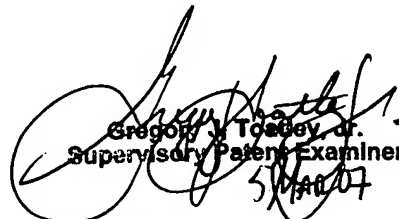
Emery et al (4,542,829) teach of an apparatus comprising a sensor array for detecting a spatial light distribution and a microcomputer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda H Merlino whose telephone number is 571-272-2421. The examiner can normally be reached on Monday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J Toatley, Jr. can be reached on 571-272-2800 ext 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Amanda H Merlino *ah*
Patent Examiner
Art Unit 2877
March 2, 2007


Gregory J. Toatley, Jr.
Supervisory Patent Examiner
5/1/07
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